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SENATE

REPORT
99-412

THE FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

AUGUST 15 (legislative day, AUGUST 11), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 2439]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2439) to amend the Act of February 25, 1920, to provide for competitive leasing of oil and gas for onshore Federal lands, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1986".

SEC. 2. (a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, which shall be as nearly compact as possible. Lease sales shall be conducted either by oral bidding or by a combination of oral and sealed bidding. Lease sales shall be held for each State, where appropriate, not less than quarterly and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish a minimum acceptable price for a lease which is at least $20 per acre. The Secretary shall accept the highest bid from a responsible qualified

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bidder which is equal to or greater than the minimum acceptable price, without evaluation of the value of the lands proposed for lease. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall become available for leasing under subsection (c) of this section for a period set by the Secretary not to exceed one year after the lease sale."

(b) The first sentence of section 17(c) of the Act of Februry 25, 1920 (30 U.S.C. 226(c)) is amended to read as follows:

"(c)(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsectin (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding.".

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding a subsection to read as follows:

"(c)(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period prescibed by the Secretary under subsection (b)(1) of ths section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended by inserting "not less than" after "minimum royalty of" and before "$1 per acre".

SEC. 3. The third sentence of section 30a of the Act of February 25, 1920 (30 U.S.C. 187a) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or subleasee or for lack of sufficient bonds: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment—(1) of a separate zone of deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska.".

SEC. 4. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thiry days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 5. The Act of February 25, 1920 (30 U.S.C. 181 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(c) of the National Environmental Policy Act. Nothing in this section shall be considered as affecting the application of section 102 of the National Environmental Policy Act to the proposed inclusion of any lands in a lease parcel or subsequent phases of oil and gas development.".

SEC. 6. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(a) Subsections (c) and (e) (16 U.S.C. 3148 (c) and (e)) are deleted in their entirety;

(b) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted; and

(c) Subsections (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

SEC. 7. (a) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this Act shall be processed, and leases shall be issued, if appropriate, under the Act of February 25, 1920 (30 U.S.C. 181 et seq.), as it was in effect before its amendment by this Act. If the date of enactment of the Act occurs during a simultaneous filing period pre-

scribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(b) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all non-competitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to July 1, 1986, shall be processed, and leases shall be issued, if appropriate, under the Act of February 25, 1920 (30 U.S.C. 181 et seq.). as it was in effect before its amendment by this Act. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between July 1, 1986, and the date of enactment of this Act, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(c) Notwithstanding any other provision of this Act, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3120) pending on the date of enactment of this Act shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued if otherwise appropriate under the Act of February 25, 1920 (30 U.S.C. 181 et seq.), as it was in effect before its amendment by this Act.

(d) No noncompetitive lease applications of offers pending on the date of enactment of this Act for lands within the Shawnee National Forest, Illinois, the Ouachita National Forest, Arkansas, Fort Chaffee, Arkansas, or Eglin Air Force Base Florida, shall be processed until these lands are posted for competitive bidding in accordance with section 2 of this Act. If any such tract receives no bid greater than or equal to the minimum acceptable price established by the Secretary then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued, if appropriate. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 8. (a) Except as provided in section 6 of this Act, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 et seq.), after the date of enactment of this Act shall be conducted in accordance with the provisions of this Act.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this Act. The regulations shall be effective when published in the Federal Register. The environmental and economic impacts of this Act having been fully considered by the Congress, the Secretary shall not prepare any environmental, economic, or small business impact analyses, which may otherwise be required by law or Executive order, when he prepares proposed regulations or adopts final regulations implementing this Act.

(c)(1) Prior to issuing regulations implementing this Act, the Secretary shall hold at least one competitive lease sale pursuant to section 2 of this Act. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this Act, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between July 1, 1986, and the date of enactment of this Act. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this Act, have been posted for the filing of simultaneous applications do not receive bids of greater than or equal to the minimum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 9. The Act of February 25, 1920 (30 U.S.C. 181 et seq.) is amended by inserting after section 40 the following new section:

"SEC. 41. (a) Any person shall be liable under the provisions of this section if that person knowingly and willfully misrepresents to the public the provisions of this Act and its implementing regulations, by any means of communication, in the following respects:

"(1) The value or potential value of any lease issued under this Act or portion thereof;

"(2) the value or potential value of any lease to be issued under this Act or portion thereof;

"(3) the value of potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act; or

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute, against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

"(g)(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) This State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

PURPOSE OF THE MEASURE

S. 2439, amended as recommended by the Committee, would reform the procedures for Federal onshore oil and gas leasing. It would:

(1) eliminate the "known geological structure" ("KGS") determination as a basis for competitive leasing;

(2) require that all Federal onshore oil and gas leases initially and periodically be offered for sale by competitive bidding, with a minimum bid of $20 per acre;

(3) provide for periodic noncompetitive leasing of land not receiving the minimum bid on a first-come, first-serve basis, or through the currently-used simultaneous filing system; and

(4) strengthen the Federal authority to stop fraudulent practices with respect to Federal onshore oil and gas leasing engaged in by private parties.

Background and Need

In the Mineral Leasing Act of 1920, as amended, the Congress established two systems for Federal onshore oil and gas leasing. A system of competitive leasing was implemented for Federal lands in a "known geologic structure of a producing oil and gas field" ("KGS"). On all other available Federal lands, leases could be acquired on a noncompetitive basis by the "person first making application for the lease who is qualified to hold a lease" under the Act.

Under the current program, there are two types of noncompetitive leasing: (1) over-the-counter; and (2) simultaneous oil and gas leasing ("SIMO"). Lands not within a KGS that have been leased previously are released under the SIMO system, in which the lessee is randomly selected from a number of applicants participating in a lottery as a means to choose among qualified applicants. Lands not within a KGS never before leased and lands receiving no applications in the SIMO system are leased through application on a first-come, first-serve basis, referred to as over-the-counter.

Currently, 28.4 percent of total Federal acreage (excluding Alaska) is under Federal onshore oil and gas lease. This is over 40 percent of the Federal lands legally available for leasing. The vast majority of onshore oil and gas leases are awarded noncompetitively. At the end of fiscal year 1985, there were 109,667 outstanding leases covering 116,536,000 acres, excluding Alaska. Of this total, approximately 5.5 percent, or 6,098 leases covering 1,384,000 acres, was issued competitively. Historically, over 95 percent of all outstanding leases have been issued on a noncompetitive basis. Most noncompetitive leases are issued under the SIMO system. Most exploration work on, and interest in, such leases has been by independent oil exploration companies rather than larger integrated companies. Most of the onshore oil and gas discoveries have been made on leases issued non-competitively.

For many years, the Federal onshore oil and gas leasing program has been criticized for: (1) failing to obtain fair market value for Federal mineral resources by leasing lands on a noncompetitive basis even though substantial competitive interest exists since prospectively valuable lands are not always in a KGS and therefore cannot be leased competitively; and (2) third parties have abused the program and engaged in fraudulent activities by making misrepresentations relating to leasing to the public.

Under the current system, the Department of the Interior ("DOI") identified KGS's based on geologic data and the location of producing wells. Historically, the KGS concept has been narrowly construed. Since lands must be within a KGS before they can be

leased competitively, some leases have been issued on a non-competitive basis despite a high degree of competitive interest because they had been determined by DOI not be be within a KGS. The imprecision involved in the KGS determination has, in instances, resulted in a failure to include lands which were later found to contain valuable deposits. These circumstances have led to the criticism that the Federal Government is not receiving fair market value for potentially valuable deposits.

For example, in 1979, DOI awarded noncompetitively (for $1 per acre) oil and gas leases on 33,000 acres within the Fort Chaffee Military Reservation in Arkansas. The lands, not previously opened to oil and gas leasing, were not designated as within a KGS, even though areas surrounding Fort Chaffee were highly productive. The U.S. District Court for the Western District of Arkansas, in *Arkla Exploration Co.* vs. *Watts,* 562 F. Supp. 1214 (W.D. Ark. 1983), *aff'd,* 734 F. 2d 347 (8th Cir. 1984), *cert. denied,* 105 S. Ct. 905 (1985), ruled that DOI had improperly drawn the KGS boundaries and invalidated the leases. In 1980, 24,000 acres of adjoining land were competitively leased for $1,705 per acre. Instead of the Treasury receiving $24,000, one-half of which would be paid to the State, the Treasury received $43 million, and $21.5 million was paid to the State.

In another situation demonstrating the problems under the current system, several tracts of land in the Amos Draw area of northeast Wyoming, located adjacent to producing lands, were leased inadvertently by DOI noncompetitively through the lottery. The Government collected only $13,000 in rental fees and $1.2 million in lottery applications for the tracts. It was reported that lease winners immediately resold the leases for fees estimated at $50 million to $100 million.

Proposals considered by the Committee during previous Congresses have sought to remedy the imprecisions in the current system through substitution of an entirely competitive process (with alternative bidding systems). These proposals have been criticized as disadvantaging independent oil companies and potentially discouraging new discovery efforts. The current proposal by Senator Bumpers, which was adopted by the Committee, addresses each of the aforementioned criticisms by proposing a multi-leveled system which initially screens each lease offered through a competitive process. However, if a given lease does not generate a market value of at least $20 per acre, it may be leased under the SIMO system or over-the-counter as provided in the legislation.

The current SIMO lottery system also has been criticized for encouraging speculation and fraud by third parties. Certain companies have engaged in misrepresenting to the public the chance of winning leases, the value of the leases, and the likelihood of industry interest in buying leases from members of the public should they win leases in the lottery. Administrative remedies imposed by DOI, such as raising the filing fee to $75 and requiring advance rental payments, have reduced but not eliminated fraudulent and speculative activities.

Current law requires that competitive leases must be 640 acres or less in size, have a royalty of not less than 12½ percent, and run for a term of 5 years (except for competitive leases issued in special

tar sand areas) and so long thereafter as oil and gas is produced in paying quantities. A 2-year extension can be granted for certain leases. By regulation, a $2-per-acre rental charge is imposed.

Noncompetitive leases must have a royalty of 12½ percent, run for a term of 10 years (though a 2-year extension can be granted for certain leases), and carry a minimum of $.50 per acre annual rental charge. The current annual rental, set by regulation, is either $1 per acre for the full 10-year lease term, or $1 per acre for the first 5 years increasing to $3 per acre thereafter, depending upon the noncompetitive leasing method. By regulation, maximum lease size for leases issued noncompetitively is 10,240 acres.

Legislative History

Legislation similar to S. 2439 to reform the Federal onshore oil and gas program has been introduced in several previous Congresses. S. 1637 was introduced in the 96th Congress and, as amended, was reported favorably by the Committee on Energy and Natural Resources. Legislation was also introduced in the 97th and 98th Congresses, but was not acted upon by the Committee.

In the 99th Congress, Senator Bumpers introduced S. 373 on January 31, 1985. S. 2439 subsequently was introduced by Senator Bumpers on May 13, 1986. Bills pending in the House during the 99th Congress relating to Federal onshore oil and gas leasing are H.R. 1960, H.R. 4741, and H.R. 4826.

S. 2439 was considered by the Committee on Energy and Natural Resources on July 30, 1986. The Committee adopted an amendment in the nature of a substitute which was offered by Senator Bumpers. On July 30, 1986, the Committee ordered that S. 2439 be reported favorably to the Senate.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources met in open business session on July 30, 1986, and by majority vote of a quorum present recommends that the Senate pass S. 2439, if amended as described herein.

The rollcall vote on reporting the measure was 15 yeas 2 nays and 1 present as follows:

YEAS	NAYS	PRESENT
Mr. McClure	Mr. Domenici*	Mr. Melcher
Mr. Hatfield*	Mr. Wallop*	
Mr. Weicker*		
Mr. Warner		
Mr. Murkowski		
Mr. Nickles		
Mr. Hecht		
Mr. Evans		
Mr. Johnston		
Mr. Bumpers		
Mr. Ford		
Mr. Metzenbaum*		
Mr. Bradley*		

YEAS	NAYS	PRESENT
Mr. Bingaman		
Mr. Rockefeller		

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

The Committee amended the text of the bill with a substitute text. The substitute text differs substantively from the bill as introduced as set forth below.

The substitute text provides in section 2(a) that lands to be leased must be leased in units of not more than 2,560 acres. S. 2439, as originally introduced, provides that the units may not be more than 5,120 acres.

Section 2(a) of the substitute text provides that lease sales shall be conducted either by oral bidding or a combination of oral and sealed bidding. S. 2439 as originally introduced is silent on the method of bidding.

Pursuant to section 2(a) of the substitute text, lease sales shall be held for each State, where appropriate, not less than quarterly and more frequently if the Secretary determines such sales are necessary.

Pursuant to section 2(a) of the substitute text, the minimum acceptable price for a lease offered for competitive bidding is at least $20 per acre instead of at least $35 per acre, as provided for in S. 2439, as introduced.

The substitute text retains the lease term of 5 years for leases obtained through competitive bidding and 10 years for leases obtained noncompetitively, as in current law. S. 2439, as introduced, would have established a 10-year lease term for both competitive and noncompetitive leases.

The above-listed changes were made to facilitate participation in the bidding process by all segments of the oil and gas industry.

The substitute text also deletes reference to the Overthrust Belt area of Wyoming found in the grandfather provision contained in section 7 of S. 2439, as introduced. This reference was made unnecessary due to administrative action taken by DOI prior to Committee consideration of the bill.

While the Committee agreed that reform of the Federal onshore oil and gas leasing program was needed, it noted its opposition to use of this measure as a vehicle to accomplish changes in land use planning and related requirements pertaining to the Federal onshore oil and gas leasing program. The Committee believes that reform of the program is necessary and that the public interest in such reform should not be frustrated by attempts to address such other issues in conjunction with this measure.

SECTION-BY-SECTION ANALYSIS

Section 1 states the title of the bill as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1986."

Section 2(a) amends section 17(b)(1) of the Mineral Lands Leasing Act of 1920, as amended, to provide that all lands to be leased

which are not subject to leasing under paragraph 17(b)(2) shall be leased to the highest responsible qualified bidder by competitive bidding. The Secretary shall establish a minimum acceptable price of at least $20 per acre for the lease. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall become available for leasing under section 17(c) for a period determined by the Secretary not to exceed 1 year after the lease sale. The intent of the remainder of the section is self-explanatory.

Section 2(b) amends section 17(c) by designating the current provision as subsection 17(c)(1) and providing that if the lands to be leased are not leased under subsection 17(b)(1) or are not subject to competitive leasing under subsection 17(b)(2), the lands are available for leasing without competitive bidding. The lands would be available for leasing without competitive bidding for the period of time not to exceed 1 year prescribed by the Secretary under section 17(b)(1).

Section (2)(c) amends section 17(c) by adding two new subsections. Subsection 17(c)(2)(A) provides that following the period set by the Secretary, lands not leased pursuant to section 17(c)(1) shall again be made available for leasing only in accordance with subsection 17(b)(1). Subsection 17(c)(2)(B) provides that certain leases expiration shall again be available for leasing only in accordance with subsection 17(b)(1).

Section 2(d) amends section 17(d) to provide for a minimum royalty of not less than $1 per acre.

Section 3 amends section 30a of the Mineral Lands Leasing Act of 1920, as amended, to retain current authority with regard to disapproval of assignments, and in addition, grants authority to the Secretary to disapprove an assignment of a part of a legal subdivision or of less than 640 acres outside of Alaska or of less than 2,560 acres within Alaska.

Section 4 amends section 31(b) of the Mineral Lands Leasing Act of 1920, as amended, to conform the lease cancellation provisions to the changes being made in the leasing provisions.

Section 5 adds a new section 43 to the Mineral Lands Leasing Act of 1920, as amended, relating to the National Environmental Policy Act. The intent of the provision is self-explanatory.

Section 6 amends section 1008 of the Alaska National Interest Lands Conservation Act to eliminate the requirement that areas determined by the Secretary to be within "favorable producing geological provinces" be leased by competitive leasing only. Rather than using the "favorable producing geological provinces" concept, lands subject to the Alaska National Interest Lands Conservation Act are to be leased in accordance with the leasing provisions of the Mineral Lands Leasing Act of 1920, as amended.

Section 7 is a "grandfather" provision for lease applications pending at the time the Federal Onshore Competitive Oil and Gas Leasing Act of 1986 is enacted. Paragraph (a) grandfathers pending simultaneous, noncompetitive applications and provides an orderly transition if DOI is conducting a simultaneous filing at the time the Federal Onshore Competitive Oil and Gas Leasing Act of 1986 is enacted. Paragraph (b) grandfathers over-the-counter noncom-

petitive applications filed prior to July 1, 1986. The July 1 cut-off date will avoid a last-minute rush of lease applications. Paragraph (c) grandfathers pending competitive applications. Paragraph (d) grandfathers pending, noncompetitive applications in certain controversial areas only if the lands are not leased competitively under section 2.

The intent of section 8 self-explanatory.

Section 9 adds a new section 41 to the Mineral Lands Leasing Act of 1920, as amended, to provide specific authority to combat certain practices involving the Federal onshore oil and gas leasing program. Subsection 41(a) imposes liability on persons making misrepresentations to the public regarding the provisions of the Mineral Lands Leasing Act of 1920, as amended, and its implementing regulations in certain specified respects. Subsection 41(b) imposes liability on any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of the Mineral Lands Leasing Act of 1920, as amended, or its implementing regulations. Subsection 41(c) imposes a civil liability standard of "knew or should have known." It provides that the Attorney General shall institute a civil action against any person who, given the nature of the intended recipient of the communication, "knew or should have known" he or she was violating the provisions of the section. Subsection 41(d) imposes a criminal liability standard of "knowingly and willfully." It imposes criminal penalties on any person who "knowingly and willfully" violates the provisions of the Section. The intent of additional provisions in section 41 relating to liability and remedies for certain activities is self-explanatory.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 7, 1986.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2439, the Federal Onshore Competitive Oil and Gas Leasing Act of 1986, as ordered reported by the Senate Committee on Energy and Natural Resources, July 29, 1986. We estimate that enactment of S. 2439 by October 1, 1987 would increase federal receipts, net of payments to states, by approximately $15 million in 1987, and by about $30 million per year over the fiscal years 1988 through 1991. Most of this increase would result from increases in bonus bid receipts as more leasing activity is shifted to the competitive process.

S. 2439 would authorize the Secretary of the Interior to lease all federal onshore oil and gas resources through a competitive process, with minimum bids of $20 per acre, and leases of no more than 2,560 acres. Lands not leased competitively—those that fail to receive a minimum bid of $20 per acre in a competitive sale—would

be available for noncompetitive leasing for one year. After that time, they would again be available only through the competitive process. The bill would also set the royalty rate for competitive leases at a flat 12.5 percent and would set rentals at a minimum of $1 per acre. The Secretary of the Interior would be required to promulgate regulations implementing the provisions of this bill within 180 days of the bill's passage.

The bill would also give the Secretary of the Interior discretion to disapprove assignments where the acreage involved is less than 640 acres outside Alaska or less than 2,560 acres within Alaska. Finally, S. 2439 would establish civil and criminal penalties for knowingly and willfully misrepresenting to public the provisions of the act and its implementing regulations.

Based on information from the Department of the Interior and upon an analysis of the results of the existing leasing system, CBO estimate that relative to current law, the competitive leasing system set up in S. 2439 would increase gross receipts from bonus bids by approximately $50 million in fiscal year 1987 and by about $100 million per year over the fiscal years 1988 through 1991. Because the federal government is required to pay to states half of the receipts, the gain to the federal government, net of payments to states, would be about $25 million in 1987 and $50 million per years over the 1988–1991 period. Partially offsetting this increase however, would be the loss of receipts to the federal government of approximately $10 million in 1987 and $20 million per year thereafter from filing fees for noncompetitive leases that would now be leased competitively. We assumed that all tracts not leased competitively would still be leased noncompetitively as under current law; therefore, there would be no change in receipts from such leases. The net result of the shift to a two-tiered system would be an increase in offsetting receipts of about $15 million in 1987 and $30 million annually, thereafter.

The increase in receipts could be less if, as a result of enactment of S. 2439, the Department of the Interior lowers royalty and rental rates on existing leases to be consistent with the rates specified in the bill for new competitive leases. Such a change would reduce receipts to the federal government and to the states, each by about $15 million a year.

CBO expects that receipts from leases that would have been issued competitively under current law would not be significantly affected by this bill. The budget impact of this bill is expected to result primarily from shifting a portion of the acreage leased each year from a noncompetitive leasing program, which presently accounts for about 95 percent of the onshore oil and gas leases, to a competitive system based on the bidding, rental, and royalty provisions established or modified by this bill.

The estimated increase in receipts depends on a number of very uncertain factors, including the number of acres that would be leased under a competitive system and the amounts of bonus bids that would be received. For the purposes of this estimate, CBO assumed that about 20 percent of the total acreage that would otherwise be leased noncompetitively through the simultaneous oil and gas (SOG) procedures and about 10 percent of the acreage that would have been leased through over the counter (OTC) procedures

each year would be leased competitively under the terms set forth in the bill. We assumed that the remainder of the acreage would not receive competitive bids and would still be leased noncompetitively. In addition, it was assumed that bonus bids of $20 per acre would be received for three quarters of the SOG acreage leased competitively while one-quarter would be leased for $40 to $50 per acre. We assumed that all OTC acreage leased competitively would receive the minimum bid of $20 per acre.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2439. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individual and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2439, as amended.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 2439 is set forth below:

THE SECRETARY OF THE INTERIOR,
Washington, July 30, 1986.

Hon. DALE L. BUMPERS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BUMPERS: This is in reference to S. 2439, a bill "To amend the Act of February 25, 1920, to provide for competitive leasing of oil and gas for onshore Federal lands, and for other purposes."

We support the enactment of S. 2439 and are working with the Office of Management and Budget to provide the Congress a comprehensive favorable report on the legislation. Prior to the completion of this report, we would like to offer you our views.

This bill makes four major changes in onshore oil and gas leasing. First, it subjects all onshore Federal lands (including those in Alaska) to competitive leasing for oil and gas. However, following the availability for competitive bidding, if lands do not receive a bonus bid of $35 per acre or greater, those lands are available to noncompetitive leasing. Second, it sets the royalty rate at a flat 12½ percent and sets the length of all leases at 10 years. Third, it gives the Secretary of the Interior the discretion to disapprove assignments where the acreage involved is less than 640 acres outside

Alaska or 2,560 acres within Alaska. Fourth, it establishes civil and criminal penalties for knowingly and willfully misrepresenting to the public the provisions of this Act and its implementing regulations.

All the goals of a forward-thinking leasing program are met by this legislation; namely, it encourages exploration and development, it ensures an adequate return to the public, it can be administered and at low cost, and it has integrity. At a time when the future of the domestic oil and gas industry is uncertain, this bill will strengthen our domestic petroleum capability by bringing stability and predictability to our Federal onshore oil and gas leasing program.

We believe this bill represents a fair and workable solution to the problems facing the Federal onshore oil and gas leasing program. The major issue at hand is how to determine which lands should be leased competitively and which not. The Department's ability to perform Known Geologic Structure (KGS) determinations will always be second-guessed no matter how qualified our personnel or the size of the budget dedicated to it. We can think of no better device to indicate which Federal lands are of sufficient value to generate competition than the marketplace. Nevertheless, we believe the original intent behind noncompetitive leasing to encourage exploration at low cost is still valid. We, therefore, endorse the concept of using a market based price test to discern between competitive and noncompetitive lands.

In a leasing program in which all lands are subject to competition, the amount of money which can be bid for a lease depends upon the potential cost of operating and maintaining that lease. In this regard, the flat low royalty rate provided for in this bill increases the amount available to bid. In addition, it provides the lessee with certainty insofar as possible future royalty costs.

Another major issue involves the potential for the fraudulent abuse of this system. We believe the provisions of this bill greatly diminish the likelihood of fraud. The use of a minimum bid places a ceiling upon the value of tracts available for noncompetitive leasing. As a result, the incentive for casual speculation by the general public to participate in noncompetitive leasing will be considerably lessened. Further, the ability to disapprove small acreage assignments will decrease the ease with which large parcels can be broken up and sold to the unsuspecting public. Finally, explicitly stated civil and criminal penalties will enhance prosecution of those who would fraudulently misrepresent this program.

Congress has provided us with wise and adequate statutory guidance for addressing environmental considerations associated with onshore oil and gas leasing. These statutes require substantial public participation in this process. We believe they give sufficient authority to deal administratively with environmental concerns relative to onshore oil and gas leasing. We do not believe these statutes need further amendment at this time nor is it desirable to do so in the context of legislation dealing with the methodology of leasing. Moreover, we would oppose efforts to add any such amendments to S. 2439. We, therefore, strongly support the decision to

limit this bill to the issues confronting the Department's method of leasing.

Sincerely,

ANN MCLAUGHLIN, *Acting Secretary.*

ADDITIONAL VIEWS OF SENATOR METZENBAUM

I support S. 2439 as reported. For over six years, Senator Bumpers has consistently drawn the attention of Congress to the mismanagement, fraud, and steady revenue loss associated with the federal onshore oil and gas leasing system. Committee adoption of S. 2439 is largely the result of his long effort to clean up the process by which the government leases oil and gas reserves on the public lands. The taxpayes owe him a debt of gratitude.

In recent months, it has become apparent that the federal oil and gas leasing system is not only plagued by the problems addressed in S. 2439, but also by environmental difficulties. For example, considerable controversy has developed over ill-planned or indiscriminate leasing and development decisons by the Department of Interior.

Since this committee has not heard testimony on these environmental issues, I did not offer amendments to S. 2439 concerning such matters as the pre-lease planning system for oil and gas. While I strongly support S. 2439, I wanted to emphasize in the strongest terms my hope that the Senate conferees on this bill will carefully consider environmental issues in seeking a compromise with the House on an onshore oil and gas leasing measure.

HOWARD M. METZENBAUM.

MINORITY VIEWS OF SENATOR MALCOLM WALLOP

I have grave reservations about the Committee voting out what is considered to be a major piece of reform legislation, S. 2439, the Federal Onshore Competitive Oil and Gas Leasing Act of 1986, in the federal government's administration of its onshore oil and gas leasing program.

First, given the present depressed state of the domestic oil and gas industry—which stretches into the Mountain West where the majoirty of federal oil and gas leasing occurs—this is not the time to restructure an integral part of our federal mineral leasing system. Second, the Committee never held hearings on this measure, which not only circumvented the standard legislative process, but also eliminated any constructive "on the record" comments from both proponents and opponents of the bill.

My state, Wyoming, has more at stake in leasing reform since it has more federal oil and gas leases and generates the most revenue for the federal government than does any other state. Out of Wyoming's 23 counties, oil and gas development comprises more than 50 percent of the tax base, and overall it accounts for 54 percent of Wyoming's assessed valuation. And, while receiving "fair market" value for oil and gas leases is an exremely important consideration for both state and federal governments, I also believe it is critical that when in pursuit of any "fair market value" quest we do not financially shut-out the small, independent operator in the process. At the same time we must continue to provide a mechanism to lease our public lands for energy exploration and develpment to protect and enhance our nation's energy independence and national security.

From correspondence I have received from independent operators in the Mountain States, I am not close to being convinced that this reform effort will allow the independent to compete in the federal leasing program, as they have in the past, with the bill's expanded competitive tier and restructured simultaneous and over-the-counter tiers. On this point, since there was no opportunity to submit testimony, I would direct the Committee members' attention to a July 31, 1986 letter from the Independent Petroleum Association of Mountain States (IPAMS) which is included at the conclusion of these remarks. This letter points out three portions of S. 2439 that could create potential problems not only for the operator but for the actual operation of the leasing program contained in this legislation.

The independent operator drills 90 percent of all wildcat wells and makes 80 percent of the significant oil and gas discoveries, or used to before the price of oil dropped 60 percent since January 1986. With prices hovering on the low end of the $10 to $15 range for the last eight months of this year, interest in exploring for new sources of domestic oil also has plummeted. Every oil-producing

state has experienced extreme cut backs in exploration activity in recent months. Already the state of Wyoming has felt the blow slashed exploration budgets from both major and independent operators has had in the loss of hundreds of jobs in the last six months, and millions of dollars in mineral related revenues.

While no one would dispute that the energy business is cyclical, it makes little sense to add more disruption through major leasing reform during a time when the industry is struggling to survive in a sea of abundant and cheap foreign oil. I simply cannot support this legislation as it stands at this time given the state of the domestic oil and gas industry.

MALCOLM WALLOP.

INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES,
Denver, CO, July 31, 1986.

Hon. MALCOLM WALLOP,
Senate Russell Building,
Washington, DC.

DEAR SENATOR WALLOP: IPAMS would like to express its concerns regarding S2439, passed out of the Senate Energy Committee on July 30. This bill is designed to reform the federal oil and gas onshore leasing system by requiring all lands to pass through a competitive sale stage before becoming available for subsequent leasing via the simultaneous filing (SIMO) or over-the-counter (OTC) system.

Any notion that this legislation enjoys widespread support from independents is mistaken. Among independents, aptly named, there exists a diversity of opinion regarding the parameters of an "ideal" leasing system. However, the risks entailed in opening up the Mineral Leasing Act—the opportunity for environmental mischief and the possibility of upsetting the competitive balance beween independents and major oil companies—have led IPAMS to consistently oppose fundamental legislative changes. This position, most recently affirmed before the House Subcommittee on Mining and Mineral Resources, is also held by the Independent Petroleum Association of America and the Rocky Mountain Oil and Gas Association. Together with IPAMS, these associations represent the vast majority of independent operators on federal lands.

IPAMS representatives have provided input to members of the Senate Energy Committee and their staff regarding problems with the federal onshore oil and gas leasing system. However, such participation in the legislative process should not be construed as a retreat from state policy. In that same spirit, we would like to express IPAMS' reservations regarding several particulars of S2439:

> The bill specifies that competitive sales be made through oral bidding or a combination of oral and sealed bidding. The essence of an oral auction is the ability of participants to respond to competing bids. If sealed bids, opened subsequent to the oral bids, are permitted, then the oral auction is a mockery. Independents will never support a competitive leasing system which does not employ meaningful oral bidding. If written bids are allowed, they must be unsealed and publicized prior to the oral auction.

All federal lands must pass through the bill's new competitive stage and, once having done so, are available via the SIMO or OTC for only one year. After that, lands must once again pass through the competitive stage. This process will disrupt the continuous availability of lands for leasing, essential to the independents' ability to put together a lease "play". There is no reason, once a parcel has "failed" the competitive, "market" test, to require it to recycle, after an arbitrary time period, through the competitive stage. In addition, lands currently available OTC are, in effect, undergoing a continuous "market" test (of $1/acre). These currently open, never-leased lands should remain open. Independents move fast in putting together a prospect, and the bureaucratic delays which would be involved in clearing OTC lands through a competitive filter would severely hinder exploratory, wildcat drilling.

The bill institutes a minimum bid of $20/acre, with Secretarial discretion to set a higher amount. This is not a true "market" test, and IPAMS' Public Lands Committee does not support such an arbitrary minimum. Again, there exists a healthy diversity of opinion among independents as to the level of, or even the need for, a minimum bid. One thing IPAMS does not want to see is a legislative "fix" which remains vulnerable to charges that the government did not receive "full" value. Any arbitrary minimum bid carries this risk. For example, if a parcel does not receive the minimum bid of $20, is leased for $1/acre vis SIMO/OTC, and subsequently resold for $15/acre, some will charge that the system is flawed and call for another "fix", probably accompanied by a leasing moratorium.

This summary of major concerns should demonstrate that S2439 does not enjoy broad support in the independent oil and gas community, IPAMS urges you to review the enclosed testimony and to defer precipitous action in this complex and crucial area during the short time remaining in the 1986 congressional session.

FRANCIS C . WILSON II,
Chairman, Public Lands.
STEPHEN SMITH,
Subcommittee on Leasing.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by S. 2439 as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ACT OF FEBRUARY 25, 1920

(41 Stat. 437, as amended)

* * * * * * *

SEC. 17. (b) * * * [(1) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible quantified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.] *(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, which shall be as nearly compact as possible. Lease sales shall be conducted either by oral bidding or by a combination of oral and sealed bidding. Lease sales shall be held for each State, where appropriate, not less than quarterly and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish a minimum acceptable price for a lease which is at least $20 per acre. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price, without evaluation of the value of the lands proposed for lease. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall become available for leasing under subsection (c) of this section for a period set by the Secretary not to exceed one year after the lease sale.*

* * * * * * *

(c) * * *

[If the lands to be leased are not subject to leasing under subsection (b) of this section, the person first making application for the

lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding.] *(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding.* Such leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease.

(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period prescribed by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section:

(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminate, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.

(d) All leases issued under this section shall be conditioned upon payment by the lessee of a rental of not less than 50 cents per acre for each year of the lease. Each year's lease rental shall be paid in advance. A minimum royalty of *not less than* $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

* * * * * * *

SEC. 30a. Notwithstanding anything to the contrary in section 30 of this Act any oil or gas lease issued under the authority of this Act may be assigned or subleased, as to all or part of the acreage included therein subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this chapter, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this Act of the assignee or sublessee to take or hold such lease or interest therein. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for performance of any and all obligations as if no assignment or sublease had been executed. [The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision.] *The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or subleasee or for lack of sufficient bonds: Provided however, That the Secretary may, in his discretion, disap-*

prove an assignment—(1) of a separate zone of deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska. Upon approval of any assignment or sublease, the assignee or sublessee shall be bounded by the terms of the lease to the same extent as if such assignee or sublessee were the original leasee, any conditions in the assignment or lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated original lease, but for not less than two year after the date or discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this chapter. Upon the segregation by an assignment of a lease issued after September 2, 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities.

* * * * * * *

SEC. 31. (b) * * *

[Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas.] *Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable to production of unitized substances in paying quantities.* Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land. Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: *Provided, however,* That when the time for payment falls upon and day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made: *Provided,*

That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

* * * * * * *

SEC. 41. (a) Any person shall be liable under the provisions of this section if that person knowingly and willfully misrepresents to the public the provisions of this Act and its implementing regulations, by any means of communication, in the following respects:

(1) The value or potential value of any lease issued under this Act or portion thereof;

(2) the value or potential value of any lease to be issued under this Act or portion thereof;

(3) the value of potential value of any land available for leasing under this Act;

(4) the availability of any land for leasing under this Act; or

(5) the abilility of the person to obtain leases under this Act on his or her own behalf or on behalf of any other persons.

(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

(c) The Attorney General shall institute, against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section , a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or both.

(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action.

(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

(g)(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

(2) This State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

(4) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.

* * * * * * *

SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(c) of the National Environmental Policy Act. Nothing in this section shall be considered as affecting the application of section 102 of the National Environmental Policy Act to the proposed inclusion of any lands in a lease parcel or subsequent phases of oil and gas development.

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

(Pub. L. 96-487, 94 Stat. 2371)

* * * * * * *

OIL AND GAS LEASING PROGRAM FOR NON-NORTH-SLOPE FEDERAL LANDS

SEC. 1008. (a) The Secretary shall establish, pursuant to the Mineral Leasing Act of 1920, as amended, an oil and gas leasing program on the Federal lands of Alaska not subject to the study required by section 1001 of this Act, other than lands included in the National Petroleum Reserve—Alaska. Such program shall not be

undertaken by the Secretary on those lands where applicable law prohibits such leasing or on those units of the National Wildlife Refuge System where the Secretary determines, after having considered the national interest in producing oil and gas from such lands, that the exploration for and development of oil and gas would be incompatible with the purpose for which such unit was established.

(b)(1)(A) In such areas as the Secretary deems favorable for the discovery of oil or gas, he shall conduct a study, or studies, or collect and analyze information obtained by permittees authorized to conduct studies under this section, of the oil and gas potential of such lands and those environmental charcteristics and wildlife resources which would be affected by the exploration for and development of such oil and gas.

(B) The Secretary is authorized to issue permits for study, including geological, geophysical, and other assessment activities, if such activities can be conducted in a manner which is consistent with the purposes for which each affected area is managed under applicable law.

(2) The Secretary shall consult with the Secretary of Energy regarding the national interest involved in exploring for and developing oil and gas from such lands and shall seek the views of the Governor of the State of Alaska, Alaskan local governments, Native Regional and Village Corporations, the Alaska Land Use Council, representatives of the oil and gas industry, conservation groups, and other interested groups and individuals in determining which land should be studied and/or leased for the exploration and development of oil and gas.

(3) The Secretary shall encourage the State to undertake similar studies on lands associated, either through geological or other land values or because of possible transportation needs, with Federal lands. The Secretary shall integrate these studies, to the maximum extent practicable, with studies on Federal lands so that needs for cooperation between the Federal Government and the State of Alaska in managing energy and other natural resources, including fish and wildlife, can be established early in the program.

(4) The Secretary shall report to the Congress by October 1, 1981, and yearly thereafter, on his efforts pursuant to this Act regarding the leasing of, and exploration and development activities on, such lands.

[(c) At such time as the studies requested in subsection (b)(4) are completed by the Secretary, or at such time as the Secretary determines that sufficient interest has been indicated in exploring an area for oil or gas, and leasing should be commenced, he shall identify those areas which he determines to be favorable for the discovery of oil or gas (hereinafter referred to as "favorable petroleum geological provinces"). In making such determination, the Secretary shall utilize all information obtained in studies conducted under subsection (b) of this section as well as any other information he may develop or require by regulation to be transmitted.]

[(d)] (c) Pursuant to the Mineral Leasing Act of 1920, as amended, the Secretary is authorized to issue leases, on the Federal lands described in this section, under such terms and conditions as he may, by regulation, prescribe. [Areas which are determined by the

Secretary to be within favorable petroleum geological provinces shall be leased only by competitive bidding.]

[(e) At such time as paying quantities of oil or gas are discovered under a noncompetitive lease issued pursuant to the Mineral Leasing Act of 1920, the Secretary shall suspend all further noncompetitive leasing in the area and shall determine the favorable petroleum geological province in proximity to such discovery. All further leasing in such area shall be in accordance with the requirements of subsection (d) of this section.]

[(f)] (*d*) Prior to any exploration activities on a lease issued pursuant to this section, the Secretary shall require the lessee to describe exploration activities in an exploration plan. He shall approve such plan if such activities can be conducted in conformity with such requirements as may be made by the Secretary for the protection and use of the land for the purpose for which it is managed under applicable law.

[(g)] (*e*) Subsequent to a discovery of oil or gas in paying quantities, and prior to developing and producing such oil and gas, the Secretary shall require the lessee to describe development and production activities in a development and production plan. He shall approve such plan if such activities may be conducted in conformity with such requirements as may be made by the Secretary for the protection and use of the land for the purpose for which it is managed under applicable law.

[(h)] (*f*) The Secretary shall monitor the performance of the lessee and, if he determines that due to significant changes in circumstances regarding that operation, including environmental or economic changes, new requirements are needed, he may require a revised development and production plan.

[(i)] (*g*) If the Secretary determines that immediate and irreparable damage will result from continuation in force of a lease, that the threat will not disappear and that the advantages of cancellation outweigh the advantages of continuation in force of a lease, he shall suspend operations for up to five years. If such a threat persists beyond such five-year suspension period, he shall cancel a lease and provide compensation to the lease under such terms as the Secretary establishes, by regulation, to be appropriate.

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